

1 BEFORE THE BOARD OF PERSONNEL APPEALS

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3 IN THE MATTER OF UNFAIR LABOR
PRACTICE CHARGE Number 36-77

4 RETAIL CLERKS UNION Local 4991
affiliated with RETAIL CLERKS
INTERNATIONAL CONFEDERATION, AFL-CIO,

FINDINGS OF FACT,
CONCLUSIONS OF LAW
and
RECOMMENDED ORDER

5 Complainant,

6 -V-

7 UNIVERSITY OF MONTANA,
MISSOULA, MONTANA,

8 Defendant.

9 * * * * *

10 On November 22, 1977, the Retail Clerks Union, local
11 4991, filed an unfair labor practice charge with the Board of
12 Personnel Appeals 1605(1)(a) and (b), R.C.M. 1947. The
13 charges grew out of activities surrounding an election, set
14 for January 19, 1978, which was to decide representation for
15 certain bargaining units at the University. On November 30,
16 1977, the University filed an answer with the Board and a
17 hearing was set for April 5, 1978. This hearing was post-
18 poned at the request of counsel for the Retail Clerks and
19 was rescheduled for April 14, 1978. On April 6, 1978, the
20 University filed an amended answer with the Board. The
21 Montana Public Employees Association (MPEA) filed a motion
22 to intervene on April 10, 1978, which was granted and on the
23 same date the MPEA filed a motion to set a pre-hearing
24 conference. This conference was held on April 14, 1978, by
25 means of a telephone conference call involving myself; Mr.
26 Harry Hjort, counsel for MPEA; Mr. Joseph Duffy, counsel for
27 the Retail Clerks; and Mr. George Mitchell, counsel for the
28 University. The hearing in the abovespecified matter was
29 held on April 12, 1978, in Missoula, Montana. All parties
30 were represented by counsel as above. As the duly appointed

1 hearing examiner of the Board, I conducted the hearing in
2 accordance with the Montana Administrative Procedures Act
3 (Section 82-4201 to 82-4225, R.C.M. 1987).

4 After thorough review of the case, including sworn
5 testimony and evidence, I make the following:

6 FINDINGS OF FACT

7 1. That prior to an election to decide representation
8 for collective bargaining purposes for certain units of
9 University employees, namely Custodial and Food Service
10 workers, which was held on January 19, 1973, Mr. Cordell
11 Brown, MPEA representative, served as the leader of the
12 MPEA organizational effort. In this capacity, Mr. Brown
13 authored and distributed, by mail and by hand, leaflets
14 espousing the MPEA position. Mr. Brown further attempted
15 to meet with employees in the bargaining units in person,
16 before, during and after working hours.

17 Mr. Brown's meetings with employees during working
18 hours precipitated a series of three meetings between
19 Mr. Brown and University supervisory personnel. The
20 identity of these supervisors is unclear but it is
21 known that on at least one occasion Mr. Carson Veere,
22 Director of University Food Service, was present. Mr.
23 Brown was cautioned that he was not to contact em-
24 ployees at the work site except before or after work
25 hours or during lunch or rest breaks. He was further
26 instructed that meetings should be held in designated
27 lunch or break areas. Supervisors provided Mr. Brown
28 with shift and break schedules.

29 2. That the University campus mail was used to distri-
30 but certain MPEA publications. Mr. Norman Walle, Super-
31 visor of Central Mail Service, questioned the propriety
32 of this use of campus mail but was told by a supervisor

1 that it was acceptable to be related to a campus
2 organization. The mailings consisted of MPEA meeting
3 notices and newsletters which were distributed to many,
4 if not all, departments of the University.

5 3. That the University, in a letter marked Exhibit a,
6 granted the use of campus mail to the Retail Clerks
7 to send materials similar to the ones sent by the MPEA.

8 DISCUSSION

9 The allegations of ULP 36-77 charges two specific acts
10 as violations of Section 59-1605(1)(a) and (b), R.C.M. 1947.
11 Both allegations contend that the University extended certain
12 privileges to the MPEA while denying these privileges to the
13 Retail Clerks.

14 The first charge is that the University allowed MPEA to
15 meet with certain employees in the bargaining unit while
16 denying such access to the Retail Clerks. I have difficulty
17 discerning any favoritism shown by the University toward the
18 MPEA. MPEA representatives were allowed at the work site
19 during work hours but those meetings were limited by the
20 University to lunch and rest breaks. No evidence was pre-
21 sented to the effect that MPEA was allowed special access
22 privileges nor was any evidence presented which showed that
23 the Retail Clerks were accorded less than equal treatment by
24 the University.

26 The second charge is that the University allowed MPEA
27 to distribute written materials through the campus mail
28 system while denying similar distribution privileges to the
29 Retail Clerks. While the University allowed MPEA mailings
30 to be made via the campus mail service, these mailings were
31 meeting notices and a newsletter which were directed to and
32 of interest to MPEA units in many departments of the University.
33 Nothing presented at the hearing would indicate these mailings

1 were in any way related to the upcoming election. Certain
2 limited use of campus mail was offered to the Retail Clerks,
3 as evidenced by Exhibit G. Again, it is impossible to detect
4 any favoritism extended toward MPEA.

5 CONCLUSIONS OF LAW

6 The allegations of ULP 36-77, that the University of
7 Montana has engaged in unfair labor practices within the
8 meaning of Section 50-1605(1)(a) and (b), R.C.M. 1947, have
9 not been sustained by the Retail Clerks Union, Local 1591.

10 RECOMMENDED ORDER

11 It is my recommended order, upon the basis of the
12 foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, and upon the
13 entire record of the case, that the charge be dismissed in
14 its entirety.

15 DATED this 24 day of July, 1978.

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18 BOARD OF PERSONNEL APPEALS
19 By Claudia Andrews
20 ~~deputy~~ Andrews
Hearing Examiner

21 CERTIFICATE OF MAILING

22 I, Marilyn K. Hoffman, hereby certify that on the 24th
23 day of July, 1978, I mailed a true and correct copy of
24 the above FINDINGS OF FACT, CONCLUSIONS OF LAW and RECOMMENDED
25 ORDER to the following:

26 Joseph W. Duffy
27 315 Davidson Building
Great Falls, MT 59401
28 George L. Mitchell
Legal Counsel
29 University of Montana
Missoula, MT 59812

Barry Hjert
MPEA
Box 5600
Helena, MT 59601

Marilyn K. Hoffman
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31 Marilyn K. Hoffman
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